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CHARLES ELMORE CAMPBELL

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In the Supreme Court of the United States

OCTOBER TERM, 1948

ISAAC GAYNOR, PETITIONER

v.

AGWILINES, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD
CIRCUIT

MEMORANDUM FOR THE RESPONDENT

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MEMORANDUM FOR THE RESPONDENT

The decision of the court below involves the question of whether a civil service employee of the United States, injured while serving as a seaman on a government-owned and operated vessel, may recover for his injuries in a suit brought against a ship's husband or general agent which acted for its disclosed principal, the United States, only in respect of certain shoreside business of the vessel, and had no authority or control over the work of the employee or the operation of the vessel and neither caused the injuries nor owed any duty whatever to prevent them.

There are now pending before this Court two other petitions for writs of certiorari, No. 351, *Cosmopolitan Shipping Company v. Robert A. McAllister*, for a writ to the United States Court of Appeals for the Second Circuit, and No. 360, *Fred W. Fink v. Shepard Steamship Company*, for a writ to the Supreme Court of the State of Oregon, both of which likewise involve the right of the Government's seamen to recover against its shoreside business agents in cases where the agent and its employees are without fault. In Nos. 351 and 360, the government seamen involved are suing for damages caused by the negligence of fellow civil service seamen in the navigation and management of the vessel. In the instant case, as the petition for a writ of certiorari indicates, the government seaman seeks to recover the maintenance, cure and wages which the United States as his employer is obligated to furnish him.¹ In addition, this Court has already granted a writ of certiorari to the United States Court of Appeals for the Fourth Circuit, No. 179, *Lillian A. Weade, et al. v. Dickman, Wright & Pugh, Inc.*, to review the related question of the right of passengers, carried on a government-owned and operated vessel under the terms of the War Shipping Administration standard form passenger ticket contract with the United States, to recover from the Government's shoreside.

¹ The cause of action for loss of personal effects is being settled and paid by the Maritime Commission and thereby will be eliminated from the case.

business agent for the negligence of the Civil service master and crew with which the United States manned, navigated and managed its vessel.

In all four of these cases, because of the public importance of the question and the fact that the United States is the real party in interest, we have taken over the defense in this Court. While we regard the decision of the instant case by the court below as correct in every respect, it unquestionably is in conflict with the *McAllister* case, No. 351, *supra*. We further believe that this case presents an appropriate complement to Nos. 351, 360 and 179 which will afford the Court an occasion to resolve at this Term, substantially all of the currently disputed issues as to any right of the Government's seamen, and other third parties, to recover from its shoreside business agents instead of from itself as their disclosed principal.

We accordingly do not oppose the granting of the writ in this case confined to the question of the agent's liability for maintenance, cure and wages, and respectfully request that, if the writs shall issue, all four cases be set down for argument with Nos. 351, 360 and the instant case to be heard together and followed in turn by No. 179.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

NOVEMBER 1948